



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes OPR MNR FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's agent testified that on October 18, 2016, he personally served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing.

Based on the above evidence, I am satisfied that the tenant was personally served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

### Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's agent testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for the months of November and December 2016. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

### Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord purchased the property in December 2015 and the tenant had been living in the rental unit approximately 1 year prior to this date. The rental unit is a basement suite and the current monthly rent is \$600.00 payable on the 1<sup>st</sup> day of each month. The landlord's agent testified that he does not hold a security deposit for this tenancy.

In a previous Residential Tenancy Branch decision dated October 7, 2016, the tenant was ordered to pay the landlord \$1800.00 on this same date for outstanding rent for the months of August, September and October 2016. The landlord was granted a Monetary Order for this amount.

The landlord's agent testified that the tenant did not pay the amount as ordered in the previous decision and on October 11, 2016 he personally served the tenant with a 10 day Notice to End Tenancy for unpaid rent or utilities. The landlord's agent testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$1200.00. The landlord testified that this includes unpaid rent for the months of November and December 2016.

### Analysis

I am satisfied that the tenant was personally served with the 10 day Notice to End Tenancy on October 11, 2016 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, October 24, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$1200.00 for the months of November and December 2016. The landlord has already been granted a Monetary Order in the amount of \$1800.00 for outstanding rent prior to November 2016.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1300.00.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1300.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 07, 2016

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Residential Tenancy Branch